



**MCI Telecommunications
Corporation**

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Washington, DC 20006
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Leonard S. Sawicki
Director
FCC Affairs

DOCKET FILE COPY ORIGINAL

EX PARTE

May 13, 1997

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street NW
Washington, D.C. 20554

Re: CCB POL 96-14
CC Docket No. 97-121

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MAY 13 1997

Federal Communications Commission
Office of Secretary

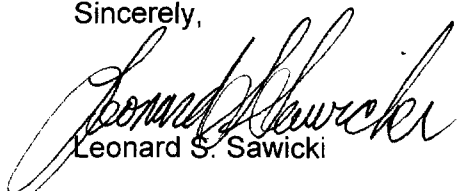
Dear Mr. Caton:

Today, Susan Jin Davis, Neal Larsen and I met with Marjorie Bertman of the Office of General Counsel and Carol Matthey, Donald Stockdale, Michelle Carey, Radhika Karmarkar, David Ellen, Jake Jennings, and Craig Brown, all of the Common Carrier Bureau. The purpose of the meeting was to review the status of telecommunications legislation in SWBT territory, the status of MCI and others' negotiations and agreements with SWBT, and MCI's position on SWBT's Section 271 application for Oklahoma.

The attached material was used during the meeting.

Please include this letter and the enclosed copy on the record of this proceeding.

Sincerely,


Leonard S. Sawicki

Attachments

cc: Ms. Bertman
Mr. Brown
Ms. Carey
Mr. Ellen
Mr. Jennings
Ms. Karmarkar
Ms. Matthey
Mr. Stockdale

No. of Pages 024



①

MCI TALKING POINTS.

Subject: SWBT 271 RFI Response

Some of the most interesting info is either confidential or voluminous. Below are some tidbits from the public doc.

As of April 3, SWBT had not received any orders for unbundled loops/ports of any kind, except for 8 trial business lines.

Four of 57 physical collos are operational, 36 of 49 virtual collos are operational.

Even though no actual line orders for UNEs have been processed, no delays for test orders has been experienced.

SWBT states that it "provides UNEs in full compliance with FCC Rules and the Federal Act."

Re OSS, UNEs can be ordered via mail, fax or telephone. In an electronic environment, Electronic Data Interchange and SWBT's LSR Exchange (LEX) interface.

SWBT offers UNEs in all 300 of its exchanges.

SWBT has provided available access to its call-related databases; no requests for AIN, but some requests for LIDB and 300DB.

Branding of operator calls will be available before June 30, 1997.

In response to the question @ the percentage of switches that are providing dialing parity, SWBT answered: 100% of the SWBT owned switches that are providing local calls on a re-sold basis have dialing parity. I guess this means no for UNE-based local service.

INP provided to facility-based providers for 32 res lines and 143 bus lines.

Resale revenues began in April of \$23k, \$757k in December, or \$2.6m for cv 1996.

With re to the checklist, SWBT has made the OK affidavits available in Austin, noting that such affs will be made TX specific at a later date.

Re OSS, SWBT provided a copy of a doc which states that it has provided CLECs the capability to access its OSS in manner that will meet or exceed their needs. Moreover, SWBT has created the

LSPSC as a single point of contact, including a help desk.

Re the public interest question on 271 relief, SWBT notes that the FTA96 does not provide the PUCT with a formal consultative role, and the "implausibility of any countervailing negative effect on competition." Also provides a copy of the OK application which addresses pub int question.
position.

C. Wayne Fritton
Attorney

Southwestern Bell Telephone
One Bell Center, Room 3504
St. Louis, Missouri 63101
Phone 314-235-4093

(2)

Southwestern Bell

May 5, 1997

VIA FAX AND MAIL

Mr. Robert H. Chozick
MCIIm Communications Corporation
2400 North Glenville Drive
Richardson, TX 75082

Re: MCIIm/SWBT Missouri Interconnection Agreement

Dear Bob:

I have had the opportunity to review the marked up and clean copies of MCIIm's proposals for Part A, Attachment X, and Attachment XI of MCIIm's proposed Missouri interconnection agreement. As part of that process, I consulted with SWBT regulatory personnel on the issue of submission of SWBT's proposed language. It is SWBT's position that the only contractual language which should be submitted to the Missouri Public Service Commission ("Commission") includes (1) issues expressly agreed upon by MCIIm and SWBT, and/or (2) those items on the issues list expressly decided by the Missouri arbitration. Neither MCIIm nor SWBT should submit contractual language to the Commission concerning issues which were not arbitrated and not agreed to.

MCIIm has insisted on use of its form contract as the basis for a Missouri interconnection agreement. SWBT has also provided additional contract language to MCIIm as part of the negotiation process. We understand that MCIIm intends to submit a contract to the Commission which contains MCIIm proposed language which was objected to by SWBT and which was not arbitrated nor agreed to. If MCIIm chooses to do so, SWBT would request that all such language remain in bold-faced type and be identified as being disagreed to. With regard to SWBT language provided to MCIIm for negotiations, SWBT would request that all SWBT language not accepted by MCIIm be removed from MCIIm's filing with the Commission, save SWBT proposals which address expressly arbitrated issues for which MCIIm and SWBT have proposed competing language. As to Part A, Attachment X, and Attachment XI, I have identified these provisions below. SWBT will identify similar provisions to MCIIm during our next round of discussions on the proposed Missouri Contract. As we have indicated repeatedly before, SWBT requests ten days to review MCIIm's planned submittal to the Commission to verify that all conventions (e.g. bold-faced type) match our understanding of what MCIIm plans to file.

The following remarks relate to the clean copies of Part A (Version 6 PLAmo.doc), Attachment X (Version 5art10mo.doc), and Attachment XI (Version 8art11Mo.doc)

PART A

- 1.2 SWBT agrees that the competing language should be submitted on this provision. SWBT would request after its proposed language that the following notation be added "(Note: SWBT is submitting language on combinations of unbundled network elements due to prior legal or administrative rulings which are being challenged by SWBT. SWBT in no way concedes that an LSP may use unbundled elements to substitute for retail Telecommunications Services without paying an appropriate resale rate."
- 2.2 SWBT would request that all of MCI's proposed language in this paragraph be placed in bold-faced type. SWBT's competing language should not be submitted to the PSC.
- 2.3 SWBT requests MCI to place all of its proposed language in this paragraph in bold-faced type. SWBT's competing language should not be submitted.
- 4.0 SWBT requests that MCI place all of its proposed language in this paragraph in bold-faced type. SWBT's competing language should not be submitted.
- 6.3 SWBT requests that its proposed language be submitted to the PSC.
- 15.3 SWBT requests that MCI place all of its proposed language in this paragraph in bold-faced type.
- 20.1.2 SWBT requests that the second sentence of MCI's proposed language be placed in bold-faced type. This sentence, which states "the non-breaching Party may pursue legal and equitable remedies consistent with Sections 12, 15, and 23 of this Agreement" was proposed by SWBT in conjunction with SWBT's proposals for Sections 12, 15, and 23. Since SWBT's proposals for Sections 12, 15, and 23 have not been agreed to by MCI and SWBT, SWBT will not be submitting language on these Sections and this sentence, if left in MCI's submission, should be placed in bold-faced type.
- 20.1.3 The last sentence of this provision should be placed in bold-faced type for the reasons referenced in the above discussion on Section 20.1.2.
- 20.4 The last three words of MCI's proposed language which state "designated by MCI" should be placed in bold-faced type. SWBT's competing language should not be submitted on this provision.

25.0 MCLm's proposed language for these provisions should be placed in bold-faced type. SWBT's competing language should not be submitted. I note your remark that the MCLm SME is reviewing this language. Hopefully MCLm and SWBT can come to agreement on SWBT's proposed language for this provision.

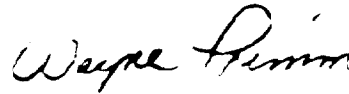
ATTACHMENT X

1. SWBT requests that its proposed Section 1 heading and Section 1.1 language be submitted to the Commission.
2. SWBT's proposed language for this provision and all subparts of Section 2 should not be submitted to the Commission because it was not arbitrated.

Unless expressly noted above, SWBT would request that all MCLm proposed language appearing in bold-faced type remain in bold type when submitted to the Commission. Unless expressly noted above, SWBT would request that its proposed language in Part A and Attachments X and XI which was not accepted by MCLm be removed from MCLm's submittal to the Commission.

Please feel free to contact me if you have any questions.

Sincerely,



C. Wayne Primm

CC: Paul Lane
Dick Oxler
Jack Frith

Appendix OSS

ACCESS to OPERATIONS SUPPORT SYSTEMS FUNCTIONS

1. General Conditions

1.1 This Appendix sets forth the terms and conditions under which SWBT provides nondiscriminatory access to SWBT's operations support systems "functions" to LSP for pre-ordering, ordering, provisioning, maintenance repair and billing. Such functions will be made available as described herein for Resale Services, as provided in Appendix Resale, and for Unbundled Network Elements (UNE), as provided in Appendix UNE.

1.2 The functions, for Resale and UNE, will be accessible via electronic interface, as described herein, where such functions are available. Manual access will be available to all pre-ordering, ordering, provisioning, and billing functions via the Local Service Provider Service Center (LSPSC). Repair and Maintenance functions are available via manual handling by the Local Service Provider Center (LSPC).

1.3 LSP agrees to utilize SWBT electronic interfaces, as SWBT defines in its requirements, only for the functions described herein for the purposes of establishing and maintaining Resale services or UNE. LSP agrees that such use will comply with SWBT's Operating Practice No. 113, Protection of Electronic Information.

1.4 LSP acknowledges and agrees that access to OSS functions will only be utilized to view end-user Customer Proprietary Network Information under the conditions set forth and agreed to in Exhibit A.

1.5 By utilizing electronic interfaces to access OSS functions, LSP acknowledges and agrees to perform accurate and correct billing functions that occur during ordering per the terms of this Agreement. Further, LSP recognizes that such billing functions for conversion orders require viewing CPNI as described in 1.4 above. All exception handling must be requested manually from LSPSC.

1.6 In areas where Resale and UNE service order transactions cannot be provided via an electronic interface for the pre-order, ordering and provisioning processes, SWBT and LSP will utilize manual work around processes until such time as the transactions can be electronically transmitted.

1.7 SWBT will provide a help desk function for electronic system interfaces.

1.8 SWBT and LSP will jointly establish interface contingency and disaster recovery plans for the pre-order, ordering and provisioning of SWBT's Resale services and UNE.

1.9 Where SWBT offers access to systems or interfaces that LSP may use to access OSS functions, SWBT reserves the right to modify any system or interface as it deems necessary.

1.10 If LSP elects to utilize industry standardized electronic interfaces for Resale or UNE, SWBT and LSP agree to work together in the Order and Billing Forum (OBF) and the Telecommunications Industry Forum (TCIF) to establish and conform to uniform industry standards for electronic interfaces for pre-order, ordering, and provisioning. Neither Party waives its rights as participants in such forums in the implementation of the standards. To achieve industry standard system functionality as quickly as possible, the Parties acknowledge that SWBT may deploy these interfaces with requirements developed in advance of industry standards. Thus, subsequent modifications may be necessary to comply with emerging standards. LSP and SWBT are individually responsible for evaluating the risk of developing their respective systems in advance of standards and agree to support their own system modifications to comply with new requirements.

2. Pre-Order

2.1 SWBT will provide access to pre-order functions to support LSP ordering of Resale services and UNE via several electronic interfaces. The parties acknowledge that ordering requirements necessitate the use of current, real time pre-order information to accurately build service orders. The following lists represent pre-order information that will be available to LSP so that LSP order requests may be created to comply with SWBT ordering requirements.

2.2 Pre-ordering functions for Resale services will include:

2.2.1 customer name, billing address and residence or business address, billed telephone numbers and features and services available in the end office where the customer is provisioned;

2.2.2 features and services to which the customer subscribes (LSP agrees that LSP's representatives will not access the information specified in this Subsection until after the customer requests that the customer's local exchange service provider be changed to LSP and such request complies with conditions of Exhibit A);

2.2.3 a telephone number (if the customer does not have one assigned) with the customer on-line;

2.2.4 if a service call is needed to install the line or service;

2.2.5 service availability dates to the customer;

2.2.6 information regarding the dispatch/installation schedule, if applicable;

2.2.7 PIC options for intral-ATA toll (when available) and interl-ATA toll.

2.3.8 address verification.

2.3 Pre-ordering functions for UNE will include:

2.3.1 customer name, billing address and residence or business address, billed telephone numbers and features and services available in the end office where the customer is provisioned;

2.3.2 features and services to which the customer subscribes (LSP agrees that LSP's representatives will not access the information specified in this Subsection until after the customer requests that the customer's local exchange service provider be changed to LSP, and such request complies with conditions of Exhibit A.)

2.3.3 telephone number (if the customer does not have one assigned) with the customer on-line;

2.3.4 PIC options for intraLATA toll (when available) and interLATA toll;

2.3.5 address verification.

2.3.6 channel facility assignment (CFA), network channel (NC), and network channel interface (NCI) data.

2.4. Electronic Access to Pre-Order Functions: Upon request by LSP for electronic access to pre-ordering functions, SWBT will provide LSP access to one or more of the following systems:

2.4.1 Resale Services Pre-order System Availability:

2.4.1.1 Residential Easy Access Sales Environment (R-EASE): R-EASE is an ordering entry system to which SWBT will provide LSP access for the functions of pre-ordering SWBT's Resale services so long as EASE is utilized to order SWBT Residential Resale Services.

2.4.1.2 Business Easy Access Sales Environment (EASE): B-EASE is an ordering entry system to which SWBT will provide LSP access for the functions of pre-ordering SWBT's Resale services so long as such access is utilized to order SWBT's Business Resale Services.

2.4.2 Resale and UNE Pre-order System Availability:

2.4.2.1 DataGate: DataGate is transaction based data query system to which SWBT will provide LSP access for the functions of gathering pre-ordering information to support industry standardized ordering processes for Residential and Business Resale services. When ordering Resale services or UNE, LSP's representatives will have access to a pre-order

electronic gateway provided by SWBT for both consumer and business customers that provides real-time access to SWBT's operations systems. This gateway shall be a Telecommunications Protocol/Internet Protocol (TCP/IP) gateway and will allow the LSP representatives to perform the pre-order functions for Resale services and UNE, as described above. SWBT and LSP agree to work together to develop and implement an electronic communication interface that will replace this initial pre-order electronic interface consistent with industry standards developed by the OBF and the TCIF.

2.4.2.2 VERIGATE is an Access Service Pre-order system that will also provide access to the pre-ordering functions for Resale Services and UNE. VERIGATE may be used in connection with electronic or manual ordering. VERIGATE provides the UNE pre-order capability of identifying CFA information, NCI, and NCI codes that are associated with order requirements for UNE.

2.5 Other Pre-order Function Availability:

2.5.1 Where due dates are not available electronically, SWBT will provide LSP with due date interval for inclusion in the service order request.

2.5.2 In addition to electronic interface access to pre-order information, upon request, SWBT will provide LSP pre-order information in batch transmission for the purposes of back-up data for periods of system unavailability. The parties recognize such information must be used to construct order requests only in exception handling.

3. Ordering/Provisioning

3.1 SWBT will provide access to ordering functions to support LSP provisioning of Resale services and UNE via several electronic interfaces. Upon request, for electronic access to ordering functions, SWBT will provide LSP access to one or more of the following systems or interfaces:

3.2 Resale Services Order Request System Availability:

3.2.1 R-EASE is available for the generation of Residential Resale services orders. Ordering Flows will be available via these systems for the following ordering functions: Conversion (as is or with changes); Change (Features, Listings, Long Distance); New Connect; Disconnect; From and To (change of premises with same service).

3.2.2 B-EASE is available for the generation of Business Resale services orders. Ordering Flows will be available via these systems for the following ordering functions: Conversion (as is or with changes); Change (Features, Listings, Long Distance); New Connect; Disconnect; From and To (change of premises with same service).

3.2.3 SWBT will provide LSP with an Electronic Data Interexchange (EDI) Interface for transmission of industry standardized Resale service order requests in formats as defined by the Ordering and Billing Forum (OBF) and EDI mapping as defined by TCIF. LSPs requesting EDI ordering functionality will be made available as negotiated and implemented as mutually acceptable to SWBT and LSP.

3.3 UNE Service Order Request Ordering System Availability:

3.3.1 In ordering and provisioning UNE, LSP and SWBT will utilize mutually agreeable standard industry order formats and data elements developed by OBF and TCIF EDI. Where industry standards do not currently exist for the ordering and provisioning of UNE, LSP and SWBT agree to jointly develop a form for ordering Common-Use UNE. Common-Use UNE, including, without limitation, tandem switching, signaling and call-related databases, Operator Services and DA, and Operations Support Systems, shall be ordered in a manner that is consistent with OBF Access Service Request Process; in addition customized routing will be ordered in the same manner. Customer Specific UNE, including, Local Loop (which includes NID), and unbundled Local Switching, and Interim Number Portability will be ordered consistent with the OBF Local Service Request (LSR) process.

3.4 SWBT will provision Resale Services and UNE as prescribed in LSP order requests. Access to status on such orders of Resale services and UNE will be provided via the following electronic interfaces:

3.5 Customer Network Administration (CNA) will allow LSP to check service order status via CNA.

3.5.1 In cases of industry standardized EDI ordering, SWBT will provide to LSP an EDI electronic interface for transferring and receiving orders, Firm Order Confirmation (FOC), service completion, and, as available, other provisioning data and information. SWBT will provide LSP with a FOC for each Resale and UNE. The FOC will contain but is not necessarily limited to: purchase order number, telephone number, Local Service Request number, due date, Service Order number, and completion date. Upon work completion, SWBT will provide LSP with an 855 EDI transaction based Order Completion that states when that order was completed. When available, SWBT will provide LSP an 865 EDI transaction based Order Completion.

3.6 A file transmission may be provided to confirm order completions for R-EASE or B-EASE order processing. This file will provide service order information of all distributed and completed orders for LSP, regardless of order entry mechanism.

4. Maintenance/Repair

4.1 Two electronic interfaces are accessible to place and check the status of trouble reports for both Resale and UNE. Upon request, LSP may access these functions via the following methods:

4.1.1 Customer Network Administration (CNA) system access provides LSP with SWBT software that allows LSP to submit trouble reports and subsequently check status on trouble reports for LSP end-users. CNA will provide ability to review the maintenance history of a converted Resale LSP account.

4.1.2 Electronic Bonding Interface (EBI) is an industry standardized interface that is available for trouble report submission and status updates. This EBI will conform to ANSI standards T1.227:1995 and T1.228:1995, Electronic Communications Implementation Committee (ECIC) Trouble Report Format Definition (TFRD) Number 1 as defined in ECIC document ECIC/TRA-95-003, and all standards referenced within those documents, as mutually agreed upon by LSP and SWBT. Functions currently implemented will include Enter Trouble, Request Trouble Report Status, Add Trouble Information, Modify Trouble Report Attributes, Trouble Report Attribute Value Change Notification, and Cancel Trouble Report, as explained in 6 and 9 of ANSI T1.228:1995. LSP - SWBT will exchange requests over a mutually agreeable X.25-based network.

5. Billing

5.1 SWBT shall bill LSP for resold services and UNE. SWBT shall send associated billing information to LSP as necessary to allow LSP to perform billing functions. At minimum, SWBT will provide LSP billing information in a paper format or via magnetic tape, as agreed to between LSP and SWBT.

5.2 Upon request, electronic access to billing information for Resale Services will also be available via the following interfaces:

5.2.1 LSP may receive a mechanized bill format via the industry standards EDI

5.2.2 LSP may also view billing information through the CNA system.

5.2.3 SWBT shall provide the Usage Toll Billable Records for Resale Services via EMR industry standard format with a daily feed.

5.3 Upon request, electronic access to billing information for UNE will also be available via the following interfaces:

5.3.1 SWBT will make available a mechanized bill data tape (local) format by February 1997.

5.3.2 LSP may also view billing information through the CNA system

5.3.3 SWBT shall provide the Usage Toll Billable Records for UNF via FMR industry standard format with a daily feed

6. Remote Access Facility

6.1 LSP may access SWBT's OSS functions via a Remote Access Facility (RAF) located in Dallas, Texas. RAF access will be required for LSP access to OSS functions for purposes of competitive activities. EASE, CNA, DATAGATE and VERIGATE will require access via the RAF.

6.2 LSP may use two types of access: Switched and Private Line. For Private Line connections, LSP shall provide its own router, circuit, and two Channel Service Units/Data Service Units (CSU/DSU). The demarcation point shall be the router interface at the RAF. Switched Access connections require LSP to provide its own modems and connection to the SWBT RAF. LSP shall pay the cost of the call if Switched Access is used.

6.3 LSP shall use TCP/IP to access SWBT OSS via the RAF. In addition, each LSP shall have a valid Internet Protocol (IP) network address. A user-id, password unique to an LSP shall be maintained to access SWBT OSS's. LSP shall provide estimates regarding its volume of transactions, number of concurrent users, desired number of private line or dial-up (switched) connections, and length of a typical session

6.4 LSP shall attend and participate in implementation meetings to discuss LSP RAF access plans in detail and schedule testing of such connections. SWBT shall make a Help Desk function available to assist LSP on an ongoing basis in accessing SWBT OSS's over the RAF

7. Operational Readiness Test (ORT) for Ordering/Provisioning

7.1 SWBT will participate with LSP in Operational Readiness Testing (ORT), which will allow for the testing of the systems, interfaces, and processes for the ordering and provisioning of Resale services. ORT will be completed in conformance with agreed upon implementation dates.

8. Rates

8.1 LSP requesting access to one or more of the SWBT OSS functions agrees to pay rates set forth below for the following elements:

System Access	\$ Insert State Rate / month
Remote Access Facility	
Direct Connection Per Port	\$ Insert State Rate / month
Dial Up Per Port	\$ Insert State Rate / month

Should unforeseen modifications and costs to provision OSS functions become required by SWBT or industry standards, SWBT reserves the right to modify its rate structure. In addition, should LSP request custom development of an exclusive interface to support OSS functions, such development will be considered by SWBT on an Individual Case Basis (ICB) and priced as such.

**Blanket Certification for End-User Authorization for Release of
Customer Proprietary Network Information (CPNI)**

The undersigned hereby agrees:

Before it may obtain CPNI of an end-user, whether via an independent request or in the course of ordering SWBT's network elements or services via manual and/or mechanized interfaces, the undersigned must, at least, certify that "yes" (Y) it has obtained Authorization for Release of CPNI and provide the name of the individual authorizing the release of CPNI. By these indications, the undersigned affirms that a current Authorization for the Release of CPNI has been obtained from an end-user and that it includes the expressed content of the language, "Minimum Scope." SWBT will then provide the CPNI referenced herein.

Minimum Scope: Authorization for the release of CPNI

- 1) An affirmative written request that substantially reflects the following: "This document serves as instruction to all holders of my local exchange telecommunications Customer Proprietary Network Information (CPNI) to provide such information to the undersigned. I understand that this CPNI includes the following information: Billing Name, Service Address, Billing Address, Service and Feature subscription, Directory Listing Information, and Long Distance Carrier Identity. This Agency remains in effect until such time that I revoke it directly or appoint another individual/company with such capacity and undersigned receives notice to disconnect my local exchange service or notice that a service disconnect has been performed. At such time, this Agency is null and void."

or

- 2) Authorization for change in local exchange service and release of CPNI with documentation that adheres to all requirements of state and federal law as applicable.

Signed

Name (Typed/Printed)

Title

Company

Date

State Office of Administrative Hearings

(4)



Sheila Bailey Taylor
Chief Administrative Law Judge

May 6, 1997

TO: Paula Mueller, Secretary
Public Utility Commission of Texas
William B. Travis State Office Building
1701 N. Congress, 7th Floor
Austin, Texas 78701

RE: SOAH Docket No. 473-96-2315
PUC Docket No. 16744

Application of MCI Metro Access Transmission Services, Inc. for a Certificate of Operating Authority

Enclosed is the original and one copy of the Proposal for Decision (PFD) and Proposed Order (PO) in the above-referenced case. Please file-stamp and return the copy to the State Office of Administrative Hearings for our records. Also enclosed is a disk containing an electronic copy of the PFD and PO. By copy of this letter, the parties to this proceeding are being served with the PFD and PO.

Please place this case on an open meeting agenda for the Commissioners' consideration. There is no jurisdictional deadline in this case. It is my understanding that you will be notifying me and the parties of the open meeting date, as well as the deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

Sincerely,

Roger W. Stewart
Administrative Law Judge

Enclosure

SOAH DOCKET NO. 473-96-2315
PUC DOCKET NO. 16744

APPLICATION OF MCIMETRO	§	BEFORE THE STATE OFFICE
ACCESS TRANSMISSION SERVICES,	§	OF
INC. FOR A CERTIFICATE	§	ADMINISTRATIVE HEARINGS
OF OPERATING AUTHORITY	§	

PROPOSAL FOR DECISION

I. Introduction

In 1995, the Texas Legislature amended the Public Utility Regulatory Act to permit applications for a certificate of authority (COA) to provide local telephone service. The purpose of this docket is to determine whether MCImetro Access Transmission Services, Inc. (MCImetro) is entitled to a COA. In its Supplemental Preliminary Order, the Public Utility Commission of Texas (PUC or Commission) took the position that the COA build-out requirement should be waived for MCImetro. In its Order on Certified Issues, the Commission provided guidance on the facilities-based nature of a COA. Now finding that no genuinely contested issues remain, the Administrative Law Judge (ALJ) grants a summary decision for MCImetro, and recommends to the Commission that it grant a COA to MCImetro.

II. Background Information

A. Procedural History

On December 5, 1996, MCImetro filed an application under P.U.C. Subst. R. 23.31 for approval of a COA in the local exchange areas of Southwestern Bell Telephone Company (SWBT). The Public Utility Regulatory Act of 1995 (P.U.RA-95 or PURA) § 3.2531 governs such applications. Under P.U.RA-95 § 3.2531(e), the Commission is required to act on the application within 90 days.

after filing, unless the Commission finds that good cause exists to extend the five-day period. In its December 19, 1996 Preliminary Order, the Commission found that good cause exists to extend the five-day period. By the same Preliminary Order, the Secretary of the Commission also transferred this docket to the State Office of Administrative Hearings (SOAH) under Title 300-V, Chapter A, § 2-203(b)(4) (see Vermont Pamphlet 1997-01 for the assignment of an ALJ) and set a hearing and issue a proposal for decision (PFD) if necessary. The Preliminary Order also specified the issues to be addressed in this case.

On December 21, 1996, the ALJ issued Order No. 1 establishing the procedural schedule for this proceeding and requiring every contesting party to file a list of contested issues.

On December 19, 1996, SWBT filed a motion to intervene, which the ALJ granted. The General Counsel of the PUC participated in this proceeding on behalf of the public interest.

SWBT filed its Comments and Identification of Contested Issues (SWBT's Contested Issues) on December 20, 1996. General Counsel filed its list of contested issues. McClintock filed its response to SWBT's Contested Issues and its motion for summary adjudication on January 7, 1997.

On January 7, 1997, the Commission's Office of Policy Development (PD) issued a draft Supplemental Preliminary Order in which the Commission would take no position that it is appropriate to affirmatively and temporarily waive the procedural requirements for McClintock. On January 14, 1997, the Commission issued its Supplemental Preliminary Order as proposed by

OPP

At the hearing on the merits on January 8, 1997, the ALJ denied MCIImetro's motion for summary adjudication, and so stated this proceeding with the proceeding in PUC Docket No. 16658 for the purpose of certifying common issues to the Commission and agreed to the parties' request to certify to the Commission the same issues as had been agreed to by the parties in Docket No. 16658.

In the Order Certifying Issues to the Commission dated January 9, 1997 and filed January 15, 1997, the ALJ certified five issues to the Commission. The parties filed briefs on the certified issues on or before January 28, 1997. GTE Card Services, Incorporated filed an *amicus curiae* brief on January 28, 1997. The Commission considered the certified issues at its open meetings on February 5 and 19, 1997. By order dated February 5, 1997 and filed February 6, 1997, the Commission found good cause to waive the 30-day deadline for ruling on certified issues contained in P.U.C. PROC. R. 22.127(d). The Commission issued its Order on Certified Issues on March 14, 1997.

On March 18, 1997, MCIImetro Access Transmission Services, Inc. filed its Motion to Sever Dockets, Motion for Summary Adjudication, and, Alternately, Motion for Hearing on the Motion MCIImetro's motion. On March 25, 1997, SWBT filed its response to MCIImetro's motion. On March 30, MCIImetro filed its reply to SWBT's response to MCIImetro's motion. On April 2, 1997, General Counsel filed a response to SWBT's response to MCIImetro's motion.

On April 4, 1997, the ALJ issued Order No. 10, reversing the MCIImetro Commission decision from the ALJ's LOA proceeding and requesting each party to file proposed findings of fact and conclusions of law by April 18. On April 18, SWBT filed its proposed findings and conclusions. MCIImetro filed the joint proposed findings and conclusions of MCIImetro and General Counsel, and

MC Metro also filed its motion to adapt proposed findings and conclusions and to expedite CFA award.

B. Jurisdiction

The Commission has jurisdiction and authority over this proceeding pursuant to PLRA's §§ 31951, 31951a and § 2531. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. § 2003.047 (Vernon Pamp. 1997).¹⁴ No party contested the Commission's or SOAH's jurisdiction.

C. Notice

PLRA's § 31951a requires the Commission to provide notice of an application for a CFA to interested parties and, if requested, to fix a time and place for a hearing and to give notice thereof. PLRA's § 31951a(c)(2)(B) requires that the Commission provide notice of such matters to the Administrative Procedure Act (APA) in addition to any other notice required by law. The APA requires to provide notice at least ten days before the hearing. TEX. GOV'T CODE ANN. § 2001.051 (Vernon Pamp. 1997). On December 4, 1996, the day before the Commission issued its Preliminary Order in this docket, the Secretary of the Commission requested the Texas Register publish notice of the application, indicating that the hearing on the merits would be held at 4:00 p.m. on Friday, December 17, 1996, at the Commission's Office located at 711 N. Congress Avenue, Austin, Texas. The Texas Register published this notice on December 17, 1996 at 21 Tex. Reg. 12236. The Commission also gave notice of this application through a posting on the Commission's World Wide Web site. Order No. 1 changed the hearing date to January 8, 1997. No

¹⁴ TEX. GOV'T CODE ANN. § 2003.047 (Vernon Pamp. 1997).

party questioned the adequacy of notice. Adequate notice of the application was provided consistent with PURA95 § 3.2531(b) and P.U.C. PROC. R. 22.54.

III. Preliminary Order Issues and Supplemental Preliminary Order Determination

In its December 10, 1996 Preliminary Order, the Commission instructed the ALJ to address at least the following issues¹:

- a. Is the applicant precluded from obtaining a COA, as a threshold matter?
 - (i) Is the applicant a municipality? [PURA § 3.251(d)].
 - (ii) Will the applicant enable a municipality to offer a service prohibited under PURA § 3.251(d)? [PURA § 3.251(d)].
 - (iii) Does the applicant currently hold a service provider certificate of authority (SPCOA) pursuant to PURA § 3.2532, for any part of the service area encompassed by its application and, if so, does it plan to relinquish such a SPCOA? [PURA § 3.2532(e)].
 - or
 - (iv) Does the applicant seek, prior to September 1, 1998, a COA in an exchange of an incumbent local exchange company serving fewer than 31,000 access lines in Texas? [PURA95 § 3.2531(h)].
- b. Does the service area proposed by the applicant meet the geographic requirements, or exceptions to such requirements, in PURA95 § 3.2531(g)?

¹ The reader may wish to note that, while some of the substantive and background text of this proposal for decision is organized along the lines of the Preliminary Order issues, the corresponding substantive findings are organized along the lines of the COA application form, while the corresponding substantive conclusions are organized along the lines of the relevant statutory provisions.

- c. Does the build-out plan proposed by the applicant comply with the deployment schedule and conditions in PURA95 § 3.2531(c)?
- d. Does the build-out plan meet the resale restrictions in PURA95 § 3.2531(d)?
- e. Is the build-out plan adequate for the purpose of providing the proposed service under the COA? Specifically, can the applicant serve a customer in the build-out area within 30 days of the date upon which a customer requests service?
- f. Is the applicant technically qualified and able to design, construct, operate, and maintain the network architecture necessary to provide the service proposed under the COA, in a fashion consistent with the benchmark quality of service standards specified in the application?
- g. Is the applicant financially qualified to provide the service proposed under the COA?
 - (i) Are the applicant's estimates of its working capital needs and its forecast of long-term capital requirements adequate and sufficient to provide service? and
 - (ii) Does the applicant have adequate access to capital to meet all of its capital requirements?

The ALJ addresses each of these Preliminary Order issues below, immediately following the reference made to the Supplemental Preliminary Order.

In the January 9, 1997 Supplemental Preliminary Order, the Commission took the position that it would be appropriate to administratively and temporarily waive the PURA95 § 3.2531 build-out requirements for MCImetro. Because this relates closely to issues one of the Preliminary Order, the ALJ will defer further discussion to that subsection of the PFD below.

a. Threshold Preclusion

MCImetro stated that it is not a municipality. PURA95 § 3.251(d).

(ii) MCImetro stated that it has no present intention to enable a municipality or municipal electric system to offer a service prohibited under PURA95 § 3.251(d).

(iii) MCImetro stated that it does not currently hold a Service Provider Certificate of Operating Authority for any part of the service area included in its application. PURA95 § 3.2532(e).

(iv) MCImetro is not seeking a COA in an exchange of an incumbent local exchange company serving fewer than 31,000 access lines in Texas. PURA95 § 3.2531(h).

No party contested any of the above issues. The ALJ therefore concludes that MCImetro is not precluded from obtaining a COA on the basis of any of the above threshold matters.

b. Geographic Service Area Requirements

MCImetro requests authority to provide service in all those areas of Texas currently served by SWBT. No party argued that these proposed service areas did not satisfy the geographic requirements in PURA95 § 3.2531(g), which requires that service areas be contiguous and reasonably compact and cover at least 27 square miles. The ALJ therefore concludes that MCImetro satisfies the geographic service area requirements.

c-e. Build-Out Plan Requirements

The PURA95 § 3.2531(c), (d), and (f) build-out plan issues were essentially mooted by the Commission's determination in its Supplemental Preliminary Order, where the Commission found it appropriate to administratively and temporarily grant a waiver of the build-out requirements of PURA95 § 3.2531 until either (a) the Federal Communications Commission (FCC) rules that the

requirements are preempted as a result of the federal Telecommunications Act of 1996 (FTA96).¹ The Commission is authorized to provide in-region interLATA service in Texas. In taking this position, the Commission adopted the rationale underlying the waiver addressed in the supplemental preliminary order in PUC Docket No. 15990.² The parties could not agree on the impact of the Supplemental Preliminary Order as to which issues, if any, should remain contested; the parties could agree, however, to submit certain questions (although SWBT did not agree to one of those questions) to be certified to the Commission. The Commission answered those questions, and the impact of the Commission's Order on Certified Issues is addressed below in section IV of this PFD. The ALJ concludes that, because good cause exists for a waiver, MCImetro is not precluded from obtaining a COA on the basis of the build-out plan requirements.

f. Technical Qualifications

MCImetro's application persuasively supported MCImetro's position that it, with the help of its parent corporations MCImetro, Inc., MCI Telecommunications Corporation, and MCI Communications Corporation, is technically qualified and able to design, construct, operate, and maintain the network architecture necessary to provide the service proposed under the COA, in a fashion consistent with the benchmark quality of service standards specified in the application. No party contested MCImetro's technical qualifications. The ALJ therefore concludes that MCImetro is technically qualified under PURA95 § 3-2531(e) to hold a COA.

¹ Public Law No. 104-194, 110 Stat. 56, codified at 47 U.S.C. §§ 151-154.

² Application of Sprint Communications Company, L.P. for a Service Provider Certificate of Operating Authority in the Alternative Certificate Operating Authority in the Territory of Southwestern Bell Telephone Company, PUC Docket No. 15990, Supplemental Preliminary Order at 1-3, June 17, 1996.

g. Financial Qualifications

MCImetro's application persuasively supported MCImetro's position that it, with the help of its parent corporations MCI Metro, Inc., MCI Telecommunications Corporation, and MCI Communications Corporation, (i) is financially capable of meeting its working capital needs for the next three years and its long-term capital requirements for the next six years, even though it has not made a reliable estimate of its working capital needs and did not indicate whether it has made a forecast of its long-term capital requirements; and (ii) has adequate access to capital to meet all of its capital requirements, as shown by annual reports to shareholders and by Securities and Exchange Commission 10-K and 10-Q forms. No party contested MCImetro's financial qualifications. The ALJ therefore concludes that MCImetro is financially qualified under PURA95 § 3-2531(e) to hold a COA.

IV. Order on Certified Issues

In its Order on Certified Issues, the Commission answered the five questions submitted by the parties as follows:

In view of the Commission's Supplemental Preliminary Order waiving the build-out requirements in this docket, what requirements of PURA95 § 3-2531, if any, remain applicable to MCImetro's application?

Answer: In light of its position in the Supplemental Preliminary Order in each docket that an administrative and temporary build-out requirement waiver is appropriate, the Commission determined that the only portions of PURA95 § 3-2531 that remained applicable to the AT&T and MCImetro COA applications were subsections (a), (b), (e), and (h). The Commission stated that, even though the waiver may last until the build-out requirement is